

§ 124.705

42 CFR Ch. I (10–1–00 Edition)

new owner's books, and the remaining depreciation for all fixed assets involved in the transaction calculated on a straight line basis using commonly adopted expected useful lifetimes.

(c) *Failure to provide notice.* Failure to provide the information required by paragraph (b) of this section, will be considered failure to provide the notice required by this section. In any case in which such information has not been provided, the Secretary will, promptly upon receiving an incomplete notice or otherwise discovering that a sale, transfer or other event giving rise to a recovery may have occurred, send a letter to the owner of the facility requesting the information needed to calculate a recovery amount.

(Approved by the Office of Management and Budget under control number 0915-0099)

§ 124.705 Amount of recovery.

(a) Except as provided in § 124.706, the amount that the United States shall be entitled to recover under this subpart is that amount bearing the same ratio to the then value of so much of the facility as constituted an approved project (or projects) as the amount of Federal participation bore to the cost of the construction or modernization under such project (or projects).

(b) The then value of the facility will be based on:

(1) The transaction value in the case of an arms-length sale or transfer, or

(2) A depreciated reproduction value in the absence of an arms-length sale or transfer or if the buyer fails to provide, within 60 days after the date of the Secretary's letter described in § 124.704(c), the information which, in the judgment of the Secretary, is necessary to establish, adjust, and apportion a transaction value. As used in this section, "transaction value" means in the case of a sale, the sale price, and in the case of a lease, the value of the lease plus the residual value of the facility at the termination of the lease (i.e., the reproduction value or, if appropriate, an alternative use value).

(c) The transaction value will be adjusted to account for the purchase or lease of other assets and the assumption of liabilities associated with the transaction. To determine the amount

of Federal recovery, the adjusted value will be apportioned to the grant-aided assets by the ratio of the remaining useful lifetime values of those assets to the sum of the remaining useful lifetime values of all assets not previously accounted for in adjusting the transaction value.

(d) A depreciated reproduction value will be established by calculating a reproduction value using construction cost indexes or current costs per square foot for construction, depending on which is more relevant to the type of construction associated with the grant. This reproduction value will then be adjusted by the ratio of the remaining useful life to the total useful life for the assets involved.

(e) In calculating the recovery amount, the Secretary will include as Federal participation any grant assistance received by the facility under an authority listed in § 124.701 and any assistance supplementary to that assistance received for the construction or modernization of the facility under the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121, *et seq.*) or the Local Public Works Capital Development Act of 1976 (Pub. L. 94-369).

§ 124.706 Calculation of interest.

(a) In addition to the amount of recovery calculated under § 124.705, the United States shall be entitled to recover interest on such amount in accordance with this section at the rate determined by the Secretary based on the average of the bond equivalent of the weekly ninety-day U.S. Treasury bill auction rate for the quarter previous to the quarter in which interest begins to accrue under this section.

(1) *Change of status before July 18, 1984.* For facilities that were sold or transferred or which ceased to be public or other nonprofit facilities before July 18, 1984, interest will be charged beginning August 17, 1984, or 180 days after the date of such sale, transfer or other, whichever is later, and ending on the date the amount the United States is entitled to recover is collected.

(2) *Change of status after July 17, 1984.* For facilities that are sold or transferred or which cease to be public or other nonprofit facilities after July 17,

1984, interest will be charged beginning 180 days after receipt by the Department of the notice required under § 124.704; *Provided*, That if such notice is not provided as prescribed, interest will be charged beginning on the date of the sale, transfer, or change of use, and ending on the date the amount which the United States is entitled to recover is collected.

(b) The Secretary may waive interest charges that result from delays caused solely by the Department.

§ 124.707 Waiver of recovery where facility is sold or transferred to a proprietary entity.

(a) *Conditions of the waiver.* The Secretary may waive the recovery rights of the United States arising under § 124.703(a) if the entity to which the facility was sold or transferred:

(1) Has filed a written request for the waiver within the time limits prescribed by this section;

(2) Has established an irrevocable trust in accordance with this section, in an amount equal to the greater of the amount that would otherwise have been recovered pursuant to § 124.705 (including accrued interest as calculated under § 124.706) or twice the cost of the remaining uncompensated services obligation of the facility as of the date of the change of status, that will be used by the entity only to provide services to those unable to pay in accordance with the requirements of subpart F of this part; and

(3) Has agreed to comply with the community service regulations set out in subpart G of this part.

(b) *Procedures for obtaining waiver.* (1) Within 30 days after the date of receipt of the information described in § 124.704(b), the Secretary will send a letter to the new owner of the facility advising of the United States' right of recovery and the opportunity to obtain a waiver. For the purpose of advising the new owner of the amount to be placed in the irrevocable trust should the owner wish to obtain a waiver, the letter will also state the dollar amount of the remaining uncompensated care obligation and the amount that would be due under § 124.705, computed as follows:

(i) *Computation of uncompensated care obligation.* (A) For a facility which changes status before the date that subpart F of this part is effective for the facility, the remaining uncompensated services obligation is zero.

(B) For a facility which changes status after the date that subpart F of this part is effective for the facility, the Secretary will multiply the annual compliance level, computed under the 10% method specified in 42 CFR 124.503(a)(1)(ii), for the fiscal year in which the change of status occurs times the number of years remaining in the facility's uncompensated services obligation. From this amount, the Secretary will subtract amounts of excess or add amounts of deficit for each fiscal year prior to the change of status for which the Secretary has previously conducted an audit of uncompensated services accounts. Excess and deficits will be adjusted by the percent change in the National Consumer Price Index for Medical Care between the year in which the excess or deficit occurred and the year in which the status change occurred. For each fiscal year prior to the change of status which the Secretary has not audited, the Secretary will add to the remaining obligation an amount equal to the annual compliance level in each such year adjusted by the percent change in the National Consumer Price Index for Medical Care between that year and the year of the status change. The amount computed as the total remaining obligation will then be multiplied by two. If the transferee chooses to accept the Secretary's calculation, no further assessments will be made of uncompensated care provided prior to the change of status date. If the transferee does not accept the calculation, the transferor or transferee may hire, and may charge against the irrevocable trust established under this section, an independent auditor to certify the compliance level and any excess or deficit for the period from May 18, 1979, up to and including the date of the change of status, using standard Departmental procedures supplemented with instructions provided by the Secretary, and submit the results in accordance with paragraph (b)(2)(ii) of this section. The audit may be conducted for any years